

REMARKS:

Claims 1-19 are in the case.

In response to the restriction requirement, the applicants elect Group II, containing claims 10-19.

Claims 1-9 have also been amended to claim the invention as a product-by-process. Although it is appreciated that a product-by-process claim is, in fact, a product claim and thus would fall within Group I, examination of claims 1-9 is still respectfully requested since the method of the invention is believed to be novel and unobvious over the prior art and produces a structurally different milk-based chewy sweet by virtue of the process, namely, a sweet which has not been discolored due to Maillard's reaction, which is known in the prior art to cause a browning of the milk component and thus a dark end product. According to the invention, practicing the elected method avoids Maillard's reaction and thus leaves the product white if no other dyes or coloring agents are added, or allows those coloring agents to be more effective, or permits the creation of striped products with a white base and a striped pattern of a different color. None of this is possible in the prior art where Maillard's reaction causes darkening and browning of the product.

By this election, thus, applicants are believed entitled to examination of method claims 10-19.

The restriction is also respectfully traversed only to the extent required for the Examiner to also examine product-by-process claims 1-9, which are believed to be in the same patentable class as method claims 10-19 since the method claims can only yield the product-by-process and the product-by-process can only result by practicing the method

claims.

It is noted that the corresponding European application has been allowed as European Patent EP 1 659 877. A copy of the European patent is attached for reference. The patent was granted on the basis of its method claims 1-9, and dependent product claims 10-18 for a product based on the method. While it is appreciated that the granting of the European application has no bearing on the allowability of the claims in the United States, the European patent is cited to comply fully with applicants' duty of disclosure. The references cited during the prosecution of the European patent (see the right-hand column of the cover page of the European patent near the bottom at item (56)) where the same references cited in the International Search Report of the PCT application on which the present application is a Rule 371 application, namely, PCT/IT2003/000528, so that these references should also have been sent to the U.S. Patent Office by the International Bureau.

Entry of this amendment and further favorable action is respectfully requested.

Respectfully submitted,

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